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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

Implementation of Section 3 of the ) MM Docket No. 92-262  
Cable Television Consumer )  
Protection and Competition Act )  
of 1992 )

To the Commission

**COMMENTS OF COX CABLE COMMUNICATIONS**

Cox Cable Communications, a Division of Cox Communications, Inc. ["Cox"], by its attorneys, submits herewith its comments in the above-captioned proceeding.<sup>1/</sup>

**Introduction**

The Notice solicits comments on appropriate implementation of the "buy-through" prohibition<sup>2/</sup> of the Cable Television and Competition Act of 1992.<sup>3/</sup> That provision forbids cable operators from requiring subscribers to purchase any service tier other than basic service as a pre-condition to purchase of per-program or per-channel video programming. For a ten-year period, this prohibition does not apply to any cable system which cannot offer buy-through capabilities "...by

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1/ Notice of Proposed Rule Making, MM Docket No. 92-262, FCC 92-540 (December 11, 1992) ["Notice"].

2/ 47 U.S.C. § 543(b)(8)(A).

3/ Pub. L. No. 102-385, 106 Stat. 1460 (1992) ["Cable Act"]. Unless otherwise indicated, statutory references are to the Cable Act's amendments to the Communications Act of 1934, as amended.

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reason of the lack of addressable converter boxes or other technological limitations..."<sup>4/</sup>

These Comments discuss the considerations which should govern definition of the "lack of addressable converter boxes or other technological limitations" which warrant exemption from the buy-through prohibition.<sup>5/</sup> Briefly, Cox urges the Commission to adopt implementing regulations which recognize that the mere availability of addressable converters does not inevitably mean that the public interest would be served by imposing that equipment on subscribers and which thus rely upon cable operators' good faith determinations whether systems have adequate technological capacity to comply with the Cable Act's provision. This regulatory posture would comport with the Cable Act's consumer-focussed objectives of minimizing unnecessary costs and corresponding rate increases, and of maximizing the utility of existing investments in consumer electronics equipment as reflected in Section 624A.

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4/ 47 U.S.C. § 543(b)(8)(B). This exemption is not available if a cable system's equipment is modified to incorporate the necessary anti-buy-through technology and will be eliminated 10 years from the Act's enactment. The Commission is also authorized to waive the prohibition if it determines that compliance would require a rate increase. 47 U.S.C. § 543(b)(8)(C).

5/ The Notice raises a number of other significant issues associated with the buy-through prohibition's implementation. Cox supports the National Cable Television Association's Comments herein, which address those issues in full detail.

Addressable Capability In and Of Itself  
Should Not Trigger Required Compliance  
With the Buy-Through Prohibition

The Cable Act apparently contemplates that cable systems will use addressable converters as the principal means of complying with the Cable Act's buy-through prohibition.<sup>6/</sup> However, even if systems are technically capable of employing fully addressable technology and supplying addressable converters to all subscribers, scrambling all services throughout the system (or even all except basic services) to permit buy-throughs would not necessarily further consumer welfare.

Cable systems using addressable converters to permit buy-throughs would have to scramble their signals on all channels; the converters would then electronically control the service received by individual subscribers. Scrambling all system channels is expensive: scrambling equipment at the headend costs approximately \$2500 per channel and addressable converters -- which would have to be provided to all subscribers -- cost approximately \$150 apiece.

Although these direct economic costs are significant -- and because of their impact on subscriber rates would, it is submitted, suffice to justify a waiver pursuant to Section 543(b)(8)(C) -- the indirect consumer costs are greater and of more decisional significance here. If signals on all

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<sup>6/</sup> See S. Rep. No. 102-92, 102d Cong., 2d Sess. (1992) ["Senate Report"] at 77.

channels are scrambled to permit discrete channel selection, subscribers must rely on converters to receive service; they cannot attach cable-ready television sets directly to the system and cannot enjoy the special features of those receivers and cable ready VCR's.<sup>7/</sup>

Because full scrambling thus disables the technical advantages of much consumer electronic equipment now being used, many systems which have addressable capabilities, including some Cox owns and operates, scramble only their premium channels.<sup>8/</sup> They do so in order to avoid the substantial subscriber dissatisfaction which would result if subscribers who do not choose per-program or per-channel services could not use their cable-ready television sets or VCR's because all system signals are scrambled.

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<sup>7/</sup> Congress explicitly required the Commission to facilitate compatibility between cable systems' technological capabilities and consumers' existing investments in electronic equipment. Section 17 of the Cable Act recognizes that consumer electronic equipment's "premium features and functions" can be "disabled or inhibited" by cable scrambling, with consequent adverse public interest impact. 47 U.S.C. § 624A(a). The Commission is directed to study consumer electronics equipment compatibility, report its conclusions to Congress and adopt regulations to assure such compatibility. Among the issues to be considered are whether and under what circumstances cable systems should be permitted to scramble signals. 47 U.S.C. § 624(b). Given addressable converters' reliance on scrambled signals, it is clear that any determination here -- which could force, not merely permit, systems to scramble signals -- must at a minimum await resolution of those proceedings.

<sup>8/</sup> This permits subscribers with so-called cable-ready equipment to, for example, watch a program on one channel while simultaneously video taping another, tape consecutive programs on different channels, or enjoy other features of their equipment.

For example, in several situations in which franchises require Cox to provide converters as part of its service, customers do not use them, preferring instead to connect their cable-ready sets and VCR's directly to the system. If the need to comply with a buy-through prohibition forced these customers to forego enjoyment of their substantial investment in electronic equipment with advanced technological capacities, there would be a tremendous local public outcry of outrage because customers would have to use unwanted converters to receive newly-scrambled signals.

(Indeed, one cable system which sought to scramble signals on its system was faced by a hearing in which subscribers protested its scrambling plans because it would reduce the capabilities of their cable-ready TV sets and VCR's with remote controls. Paul Kagan Associates, Cable TV Franchising (March 29, 1990) at 7. Similarly, at one Cox system, penetration increased substantially after Cox stopped scrambling non-basic services: customers preferred the convenience of using their own equipment to the advantages of full addressability.)

Congress adopted the buy-through prohibition to facilitate subscriber choice.<sup>2/</sup> But subscribers make choices not only about the programming services they receive, but also

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<sup>2/</sup> "...[O]ne of the prime goals of the legislation is to enhance subscriber choice." Senate Report at 77.

about the equipment they use to receive those services. Both types of choices should be respected by regulation.

It would be ironic indeed if a Cable Act provision with clear pro-consumer intent should have a decided anti-consumer impact. Yet that is precisely what would occur if the Commission were to find that a cable system's mere installation of some or a substantial portion of addressable converters were to trigger required compliance with the buy-through prohibition. Systems having such capacity which do not now exploit it in the interests of their subscribers would be forced to do so, with the result that consumers who do not want premium services would nonetheless be forced to lose the technological advantages they paid for when purchasing cable ready sets and VCR's.<sup>10/</sup>

In short, the mere availability of addressable converters, without more, should not be considered per se ability to comply with the buy-through prohibition. Rather, compliance should not be required unless a cable operator has placed addressable converters in 100% of subscriber households and, notwithstanding the consumer disadvantages discussed above, has chosen to scramble all channels for other valid purposes such as theft of service prevention.

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<sup>10/</sup> State-of-the-art converters do have the capacity to permit access to scrambled signals and to permit use of cable-ready sets for reception of non-scrambled signals. However, if a system were forced to scramble all signals to comply with anti-buy-through requirements, this function would be defeated.

**The Ability to Install Traps  
Should Not be Considered Sufficient  
To Preclude the Availability of a Waiver**

Systems may be able to offer premium per-channel or per-program services without requiring purchase of intermediate service tiers by trapping out unwanted (intermediate tier) services. Unless all basic tier channels are grouped together (something that is highly unlikely if the broadcast stations require on-channel carriage<sup>11/</sup>), this would require installation of a series of filters at a subscriber's home in order to trap the non-basic channels.

Trapping at individual drops is extremely costly: individual filters cost approximately \$5.00 apiece, and if multiple traps must be used or if the service must be provided to large numbers of subscribers, the per-subscriber cost is significant. Trapping on a per-subscriber basis could also be an administrative nightmare, if large numbers of subscribers desire various combinations of pay and non-pay channels. And traps are subject to circumvention, so that systems can suffer major revenue losses due to theft of service. Traps are, in short, an unacceptable approach to mandated compliance with the buy-through prohibition.<sup>12/</sup>

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11/ See, e.g., 47 U.S.C. § 614(b)(6).

12/ Trapping can be used in conjunction with addressable converters. If 30% of subscribers had addressable converters, for example, a system could offer anti-buy-through options if basic services were clustered on adjacent channels so that a single filter could be used for multiple channels. However, most systems do not cluster basic services on a single group of  
(continued...)

In light of these considerations, cable systems should not be required to comply with, or be denied waivers of the buy-through prohibition merely because it is possible to install traps on a selective basis. The massive direct and indirect costs of requiring installation of filters at a large number of individual subscriber locations would inevitably cause basic subscriber rate increases; the need to rely on traps to comply with the buy-through prohibition should therefore establish a prima facie case for a Section 543(b)(8)(C) waiver.<sup>13/</sup>

### Conclusion

One looks in vain in the record of the hearings which preceded the Cable Act and in its legislative history for substantial evidence of overwhelming consumer demand for a buy-through prohibition.<sup>14/</sup> In contrast, operational experience establishes that subscribers will aggressively resist cable operations which restrict full exploitation of consumer

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12/ (...continued)  
channels, and to do so (assuming local broadcasters would even accede to channel re-positioning) would be certain to create subscriber disruption and dissatisfaction. Moreover, there are also direct costs associated with system reconfiguration.

13/ Costs could, of course, be minimized if all basic signals could be clustered -- if local broadcast stations agreed to necessary channel re-positioning. However, the customer dissatisfaction associated with significant repositioning would also be a critical consideration, as would the attendant costs of providing adequate notice of repositioning and responding to inquiries from irate or confused subscribers.

14/ In fact, very few subscribers would benefit from the anti-buy through provisions. In Cox systems, less than 0.1% of subscribers are basic-only subscribers.



electronic equipment's advanced technology. Forcing compliance with the buy-through prohibition would have that result.

The Commission must recognize that addressable converters may permit basic subscribers to selectively access premium services without purchasing intermediate tiers, but that they do so at the cost of preventing non-premium service subscribers from using the full capacity of equipment in which they have enormous investments. It must also recognize that currently available alternative means of compliance with the buy-through prohibition are cumbersome and costly and will cause significant rate increases. Full compliance with the buy-through prohibition should thus be a result of weighing consumer costs and benefits, a balance best left to the cable operator.

Cox therefore urges the Commission to consider cable systems to be technically capable of complying with the buy-through prohibition only if they are actually scrambling all signals and using addressable converters' full capabilities.

Respectfully submitted,

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